

AMENDED IN SENATE JANUARY 4, 2006

AMENDED IN SENATE APRIL 19, 2005

**SENATE BILL**

**No. 729**

**Introduced by ~~Senator Lowenthal~~ *Senators Simitian and Perata***

February 22, 2005

---

An act to amend Sections ~~13167, 13168, 13170.1, 13171, 13191.3, 13201, 13205, 13220, 13223, 13225, 13260, 13260.3, 13265, 13266, 13267, 13268, 13269, 13292, 13323, 13350, 13440, 13267, 13268, 13323, 13440, 13441, and 13443~~ and *13441* of, and to add Sections 183.5, ~~13204.5, and 13399.26~~ and *13204.5* to, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 729, as amended, ~~Lowenthal~~ *Simitian*. Water quality.

(1) Under the Porter-Cologne Water Quality Control Act, the State Water Resources Control Board (*state board*) and the California regional water quality control boards (*regional boards*) are the principal state agencies with primary authority over water quality matters.

This bill would require the state board to hold regular meetings at least once a month. The bill would require at least one member of the state board to attend each meeting of a regional board during each calendar year.

(2) ~~The act requires the state board to implement a public information program on matters involving water quality and to maintain an information file on water quality research and other pertinent matters.~~

~~This bill would require the state board to establish a database on or before November 1, 2006, to be used by the state board and the regional boards for recording certain information relating to possible~~

~~water quality problems and to undertake other duties relating to the information in the database.~~

~~(3) The act requires the state board to prepare a proposed annual budget and requires the regional boards to prepare and submit a proposed annual budget to the state board.~~

This bill would require the state board to prepare its proposed annual budget in consultation with the California Environmental Protection Agency and to submit the proposed annual budget to the Department of Finance and the Legislature. The bill would require the regional boards to submit their proposed annual budgets to the Legislature, in addition to the state board.

~~(4)~~

~~(3) The act requires the state board to consider relevant management agency agreements prior to adopting water quality control plans.~~

This bill would prohibit a management agency agreement from restricting authority or responsibility of the state board or the regional boards. The bill would require the state board to review the agreements at least once every 5 years, to update the agreements, as needed, and to make the agreements accessible to the public through the Internet.

~~(5)~~

~~(4) The act authorizes the state board to establish a Water Quality Coordinating Committee to assist the state board in carrying out its responsibilities under the act.~~

This bill, instead, would ~~require~~ *authorize* the state board to establish a Water Quality ~~Enforcement~~ Coordinating Committee to assist the state board and the regional boards in carrying out their responsibilities under the act, as prescribed.

~~(6) The act requires the state board, on or before July 1, 2003, to prepare guidelines to be used by the state board and the regional boards for the purpose of listing and delisting waters and developing and implementing the total maximum daily load program.~~

This bill would require the guidelines to reflect the state board's prioritization of the cleanup of certain state waters listed pursuant to the Clean Water Act based on specified criteria and would require the state board to finalize the expanded guidelines not later than April 1, 2007.

~~(7) The act requires each regional board to consist of 9 members with prescribed qualifications.~~

~~This bill would require each regional board to consist of 5 members and would revise the qualifications applicable to those public offices:~~

~~(8)~~

~~(5) The act requires each member of a regional board to receive \$100 for each day during which that member is engaged in the performance of official duties and prohibits the total annual compensation of each board member from exceeding \$13,500.~~

~~This bill would change that \$100 daily compensation amount to \$500 and the annual compensation limit from \$13,500 to \$30,000, and would authorize specified increases in that compensation.~~

~~(9)~~

~~(6) The act authorizes each regional board to delegate *it* its powers and duties to its executive officer, except for powers and duties relating to, among other things, the issuance, modification, or revocation of a water quality control plan, water quality objectives, or waste discharge requirements.~~

~~This bill, with a certain exception, would authorize a regional board to delegate to its executive officer permit rescissions and minor national pollutant discharge elimination system permits or waste discharge requirements, as defined.~~

~~(10) The act requires the state board to report annually to the Governor and the Legislature relating to the expenditure of specified fees.~~

~~This bill would require, in addition, that the state board submit that report to the Legislative Analyst's Office, and would require that the office review the report and prepare a specified assessment in connection with that review.~~

~~(11) The act authorizes each regional board to prescribe regulations that require cities and counties to notify the regional board of the filing of a tentative subdivision map or an application for a building permit that may involve the discharge of waste.~~

~~This bill would require cities and counties to notify the appropriate regional board of the preparation of a tentative subdivision map or an application for a building permit that may involve the discharge of waste.~~

~~(12) The act requires a waiver as to a specific discharge or type of discharge to include certain conditions.~~

~~This bill would include among those conditions the submission to the regional board of the appropriate notice of intent to obtain coverage under the waiver and other related information.~~

~~(13) The act requires the state board to provide annual training to regional board members to improve public participation procedures at the regional level.~~

~~This bill, for the purpose of ensuring adequate public participation in regional board proceedings, would require the state board and the regional boards to take certain actions.~~

~~(14) The act regulates the discharge of stormwater.~~

~~This bill would require the state board to prescribe in quantifiable terms the definitions of “best available technology” and “maximum extent practicable” for all pollutants found in stormwater discharges and for which a numeric water quality standard has been established in any water quality control plan and to include those numeric effluent limits in stormwater permits, as those permits are updated.~~

~~(15) The act provides that a person discharging waste in violation of certain provisions, after being notified of the violation by a regional board, is guilty of a misdemeanor.~~

~~This bill would delete the notification requirement, thereby imposing a state-mandated local program by changing the scope of a crime.~~

~~(16)~~

~~(7) The act authorizes a regional board to investigate the quality of state waters, and grants to a regional board certain authority in connection with those investigative functions. The act authorizes a regional board to impose administratively civil liability in connection with violations of certain water quality provisions.~~

~~This bill would specify that the state board may also carry out this authority.~~

~~(17) The act subjects a person to civil liability if that person, in violation of certain water quality requirements, discharges waste or causes or permits waste to be deposited where it is discharged into the waters of the state.~~

~~This bill, instead, would subject a person to civil liability if that person violates those water quality requirements.~~

~~(18)~~

~~(8) The act requires a regional board to obtain coordinated action in water quality control, including the prevention and abatement of water pollution and nuisance.~~

~~The bill would require, in addition, that each regional board establish and implement specific, statewide rates of compliance with the act. The bill would require each regional board to identify and post~~

~~on the Internet the schedules for the identification and the specific allocation of the total maximum daily loads for certain waters, and would require that the date prescribed for that specific allocation in an implementation plan is within 10 years of the date on which the applicable water body is listed in accordance with the Clean Water Act. The bill would require the *each* regional board to post on the Internet certain other water quality-related information, including a summary list of enforcement actions undertaken by that regional board and the dispositions of those actions.~~

~~(19) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~yes~~ no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) To ensure that the people of California have access to a
- 4 safe, abundant supply of water that meets water quality standards
- 5 that protect Californians' use of their water, now and in the
- 6 future, the state and regional water boards should work
- 7 expeditiously and efficiently to achieve water quality standards
- 8 in all waters of the state, in a manner that provides clear
- 9 accountability to the public.
- 10 (b) The state board has determined that almost 700 water
- 11 bodies in the state are "impaired," or so polluted that they can no
- 12 longer be used for fishing, swimming, or some other use for
- 13 which the waters were originally suitable. Over 40 percent of the
- 14 state's impaired waters are contaminated by pathogens (bacteria
- 15 and viruses). Many of these and other waters are also
- 16 contaminated by toxic metals, pesticides, nutrients and sediment.
- 17 Stormwater (urban runoff) and agricultural runoff are the most
- 18 significant sources of these impairments.
- 19 (c) Based on the state board's most recent beach report,
- 20 virtually all of the state's beach closures and postings, over 1,000

1 incidents a year, corresponding to over 6,000 days per year in  
2 which a posting or closure has occurred, are due to sewage  
3 releases or stormwater, including pathogens in stormwater.

4 SEC. 2. Section 183.5 is added to the Water Code, to read:

5 183.5. The board shall hold a regular meeting at least once a  
6 month and additional special meetings that the board determines  
7 are necessary.

8 ~~SEC. 3. Section 13167 of the Water Code is amended to read:~~

9 ~~13167. (a) The state board shall implement a public~~  
10 ~~information program on matters involving water quality, and~~  
11 ~~shall maintain an information file on water quality research and~~  
12 ~~other pertinent matters.~~

13 ~~(b) The state board shall establish a database on or before~~  
14 ~~November 1, 2006, to be used by the state board and the regional~~  
15 ~~boards for recording information received from the public, local~~  
16 ~~health officers, and the regulated community relating to possible~~  
17 ~~water quality problems such as pollution spills or other releases,~~  
18 ~~potential illegal discharges, contaminated sites, and similar issues~~  
19 ~~and concerns. The state board and the regional boards shall~~  
20 ~~record, and make available to the public on the Internet, that~~  
21 ~~information necessary to characterize each reported issue or~~  
22 ~~concern, including the date of receipt of, as well as the date and~~  
23 ~~details of any responses by the state board or the regional boards~~  
24 ~~to, the information report.~~

25 ~~SEC. 4.~~

26 SEC. 3. Section 13168 of the Water Code is amended to read:

27 13168. The state board shall allocate to the regional boards  
28 from funds appropriated to the state board any part thereof as  
29 may be necessary for the administrative expenses of those  
30 regional boards. The regional boards shall prepare and submit  
31 proposed annual budgets to the state board and the Legislature.  
32 Subject to Chapter 3 (commencing with Section 13290) of Part 3  
33 of Division 3 of Title 2 of the Government Code, and any other  
34 laws giving the Department of Finance fiscal and budgetary  
35 control over state departments generally, the state board, in  
36 consultation with the California Environmental Protection  
37 Agency, shall prepare a proposed annual budget concerning its  
38 activities and the activities of the regional boards, and shall  
39 submit the proposed budget to the Department of Finance and the  
40 Legislature.

1     ~~SEC. 5.~~

2     ~~SEC. 4.~~ Section 13170.1 of the Water Code is amended to  
3 read:

4     13170.1. (a) The state board shall consider all relevant  
5 management agency agreements, which are intended to protect a  
6 specific beneficial use of water, prior to adopting all water  
7 quality control plans pursuant to Section 13170.

8     (b) A management agency agreement may not restrict any  
9 authority or responsibility of the state board or the regional  
10 boards described in this division.

11     (c) The state board shall review all management agency  
12 agreements at least once every five years and update those  
13 agreements, as needed, to ensure that they facilitate the  
14 achievement of water quality standards in all affected water  
15 bodies. The first review shall be completed on or before July 1,  
16 2007.

17     (d) The state board shall make these management agency  
18 agreements accessible to the public through the Internet.

19     ~~SEC. 6.~~ ~~Section 13171 of the Water Code is amended to read:~~

20     ~~13171. (a) The state board shall establish a Water Quality~~  
21 ~~Enforcement Coordinating Committee, consisting of at least one~~  
22 ~~member of each of the nine regional boards, one member of the~~  
23 ~~state board, the executive officer of each regional board, the~~  
24 ~~executive officer of the state board, one person representing the~~  
25 ~~Office of the Attorney General, and one representative of the~~  
26 ~~Secretary of the California Environmental Protection Agency, to~~  
27 ~~assist the state board and the regional boards in carrying out their~~  
28 ~~responsibilities in the enforcement of this division.~~

29     ~~(b) The committee shall recommend and review annually~~  
30 ~~numeric compliance rates in accordance with Section 13225, and~~  
31 ~~shall develop and implement a procedure for the state board and~~  
32 ~~the Secretary of the California Environmental Protection Agency,~~  
33 ~~in accordance with Chapter 2 (commencing with Section 12850)~~  
34 ~~of Part 2.5 of Division 3 of Title 2 of the Government Code, to~~  
35 ~~investigate and act on significant compliance and enforcement~~  
36 ~~matters under the jurisdiction of the state board or the regional~~  
37 ~~boards, as needed, to ensure the consistent, timely, and~~  
38 ~~comprehensive enforcement of the requirements of this division.~~

39     ~~(c) For the purposes of determining what constitutes~~  
40 ~~“significant compliance and enforcement matters” the committee~~

1 shall consider factors such as the nature, circumstance, extent,  
2 and gravity of the violation or violations, whether the discharge  
3 is susceptible to cleanup or abatement, the degree of toxicity of  
4 the discharge, and any other relevant factors.

5 SEC. 7. Section 13191.3 of the Water Code is amended to  
6 read:

7 13191.3. (a) The state board, on or before December 1, 2006,  
8 shall prepare guidelines to be used by the state board and the  
9 regional boards for the purpose of listing and delisting waters and  
10 developing and implementing the total maximum daily load  
11 (TMDL) program and total maximum daily loads pursuant to  
12 Section 303(d) of the federal Clean Water Act (33 U.S.C. Sec.  
13 1313(d)).

14 (b) For the purposes of preparing the guidelines, the state  
15 board shall consider the consensus recommendations adopted by  
16 the public advisory group convened pursuant to Section 13191.

17 (c) The guidelines shall reflect the state board's prioritization  
18 of the cleanup of state waters listed pursuant to Section 303(d) of  
19 the federal Clean Water Act (33 U.S.C. Sec. 1313(d)) based on  
20 criteria that include the degree that water quality objectives are  
21 not met or beneficial uses are not attained or threatened, the  
22 potential threat to human health and the environment, the water  
23 quality benefits of activities ongoing in the watershed, the  
24 potential for expeditious beneficial use protection and recovery,  
25 the degree of public concern, the availability of funding, and the  
26 availability of data and information to address the water quality  
27 problem.

28 (d) The guidelines shall not affect the responsibility of the  
29 regional boards pursuant to Sections 13240 and 13241 to review  
30 regional water quality control plans and to establish water quality  
31 objectives.

32 (e) If the state board determines, as a result of preparing the  
33 guidelines, that additional funding or efforts are needed with  
34 respect to the implementation of Section 13240 or 13241, the  
35 state board shall set forth its recommendations with respect to the  
36 funding or efforts in a report to the Legislature.

37 (f) The guidelines shall be finalized not later than April 1,  
38 2007.

39 SEC. 8. Section 13201 of the Water Code is amended to read:



1     ~~13201. (a) There is a regional board for each of the regions~~  
2 ~~described in Section 13200. Each board shall consist of the~~  
3 ~~following nine members appointed by the Governor, each of~~  
4 ~~whom shall represent and act on behalf of all the people and shall~~  
5 ~~reside or have a principal place of business within the region:~~

6     ~~(1) One person associated with water supply, conservation,~~  
7 ~~and production.~~

8     ~~(2) One person associated with irrigated agriculture.~~

9     ~~(3) One person associated with industrial water use.~~

10    ~~(4) One person associated with municipal government. Upon~~  
11 ~~the next vacancy occurring in this office on or after January 1,~~  
12 ~~2004, this person shall be a city council member or mayor.~~

13    ~~(5) One person associated with county government. Upon the~~  
14 ~~next vacancy occurring in this office on or after January 1, 2004,~~  
15 ~~this person shall be a county supervisor.~~

16    ~~(6) One person from a responsible nongovernmental~~  
17 ~~organization associated with recreation, fish, or wildlife.~~

18    ~~(7) Three persons not specifically associated with any of the~~  
19 ~~foregoing categories, two of whom shall have special~~  
20 ~~competence in areas related to water quality problems.~~

21    ~~(b) All persons appointed to a regional board shall be subject~~  
22 ~~to Senate confirmation, but shall not be required to appear before~~  
23 ~~any committee of the Senate for purposes of such confirmation~~  
24 ~~unless specifically requested to appear by the Senate Committee~~  
25 ~~on Rules.~~

26    ~~(c) Insofar as practicable, appointments shall be made in such~~  
27 ~~manner as to result in representation on the board from all parts~~  
28 ~~of the region.~~

29    ~~(d) Notwithstanding subdivision (a), if appointments cannot be~~  
30 ~~made pursuant to paragraph (5) of subdivision (a) because of the~~  
31 ~~requirements of Section 13388, those appointments may be made~~  
32 ~~of persons not specifically associated with any category.~~

33    ~~SEC. 5. Section 13171 of the Water Code is amended to read:~~  
34 ~~13171. The state board may establish a Water Quality~~  
35 ~~Coordinating Committee, consisting of at least one member of~~  
36 ~~each of the nine regional boards, and one member of the state~~  
37 ~~board, to assist the state board and the regional boards in~~  
38 ~~carrying out its their water quality control responsibilities in~~  
39 ~~water quality control, particularly with regard to the enforcement~~  
40 ~~of this division.~~

1     ~~SEC. 9.~~

2     ~~SEC. 6.~~ Section 13204.5 is added to the Water Code, to read:  
3     13204.5. At least one member of the state board shall attend  
4 each meeting held by a regional board.

5     ~~SEC. 10.~~

6     ~~SEC. 7.~~ Section 13205 of the Water Code is amended to read:  
7     13205. Each member of a regional board shall receive five  
8 hundred dollars (\$500) for each day during which that member is  
9 engaged in the performance of official duties, including  
10 preparation for regional board meetings, except that no member  
11 shall be entitled to receive the five hundred dollars (\$500)  
12 compensation if the member otherwise receives compensation  
13 from other sources for performing those duties. The total  
14 compensation received by members of each regional board shall  
15 not exceed, in any one fiscal year, the sum of thirty thousand  
16 dollars (\$30,000). A member may decline compensation. The  
17 annual compensation provided by this section shall be increased  
18 in any fiscal year in which a general salary increase is provided  
19 for state employees. The amount of the increase provided by this  
20 section shall be comparable to, but shall not exceed, the  
21 percentage of the general salary increases provided for state  
22 employees during that fiscal year. In addition to the  
23 compensation, each member shall be reimbursed for necessary  
24 traveling and other expenses incurred in the performance of  
25 official duties.

26     ~~SEC. 11.~~

27     ~~SEC. 8.~~ Section 13220 of the Water Code is amended to read:  
28     13220. Each regional board shall do all of the following:

- 29     (a) Establish an office.  
30     (b) Select one of its members as ~~chairman~~ *chairperson* at the  
31 first regular meeting held each year.  
32     (c) In consultation with the executive officer of the state  
33 board, appoint as its confidential employee, exempt from civil  
34 service under Section 4 of Article VII of the California  
35 Constitution, and fix the salary of, an executive officer who shall  
36 meet technical qualifications as defined by the State Water  
37 Resources Control Board. The executive officer shall serve at the  
38 pleasure of the regional board.  
39     (d) Employ any other assistants which may be determined  
40 necessary to assist the executive officer.

~~SEC. 12.~~

*SEC. 9.* Section 13223 of the Water Code is amended to read:

13223. (a) Each regional board may delegate any of its powers and duties vested in it by this division to its executive officer, except any of the following powers and duties:

(1) The promulgation of any regulation.

(2) Except as provided in subdivision (b), the issuance, modification, or revocation of any water quality control plan, water quality objectives, or waste discharge requirement.

(3) The issuance, modification, or revocation of any cease and desist order.

(4) The holding of any hearing on water quality control plans.

(5) The application to the Attorney General for judicial enforcement, but excluding cases of specific delegation in a cease and desist order and excluding the cases described in subdivision (c) of Section 13002 and Sections 13304 and 13340.

(b) (1) Notwithstanding subdivision (a), a regional board may delegate to its executive officer permit rescissions and minor national pollutant discharge elimination system (NPDES) permits or waste discharge requirements. “Minor NPDES permits or waste discharge requirements” are those that address facilities discharging less than 100,000 gallons per day. Delegation shall not occur if the holder of the permit or waste discharge requirement is the subject of an enforcement order.

(2) Each regional board shall publish a list of the permits or waste discharge requirements that are proposed for review by its executive officer on a calendar that is accessible to the public, and shall allow the public 30 days to request that a permit or waste discharge requirement matter be reviewed by the regional board instead of its executive officer.

(c) Whenever any reference is made in this division to any action that may be taken by a regional board, such reference includes such action by its executive officer pursuant to powers and duties delegated to him by the regional board.

~~SEC. 13.~~

*SEC. 10.* Section 13225 of the Water Code is amended to read:

13225. Each regional board, with respect to its region, shall do all of the following:

1 (a) Coordinate with the state board and other regional boards,  
2 as well as other state agencies with responsibility for water  
3 quality, ~~in water quality control~~ *with respect to water quality*  
4 *control matters*, including the prevention and abatement of water  
5 pollution and nuisance, with the goal of achieving water quality  
6 standards in all water of the state by the earliest feasible date.

7 (b) Encourage and assist in waste disposal programs, as  
8 needed and feasible, and upon application of any person, advise  
9 the applicant of the condition to be maintained in any disposal  
10 area or receiving waters into which the waste is being discharged.

11 (c) Require as necessary any state or local agency to  
12 investigate and report on any technical factors involved in water  
13 quality control or to obtain and submit analyses of water;  
14 provided that the burden, including costs, of such reports shall  
15 bear a reasonable relationship to the need for the report and the  
16 benefits to be obtained therefrom.

17 (d) Request enforcement by appropriate federal, state and local  
18 agencies of their respective water quality control laws.

19 (e) In consultation with the state board, establish and  
20 implement specific, statewide rates of compliance with the  
21 requirements of this division. These rates shall be increased  
22 annually, with the goal of ensuring full enforcement of the  
23 requirements of this division by the earliest feasible date.

24 (f) Recommend to the state board projects which the regional  
25 board considers eligible for any financial assistance which may  
26 be available through the state board.

27 (g) Report to the state board and appropriate local health  
28 officer any case of suspected contamination in its region.

29 (h) File with the state board copies of the record of any official  
30 action. The state board shall make this information available to  
31 the public through the state board's Internet Web site.

32 (i) Take into consideration the effect of its actions pursuant to  
33 this chapter on the California Water Plan adopted or revised  
34 pursuant to Division 6 (commencing with Section 10000) of this  
35 code and on any other general or coordinated governmental plan  
36 looking toward the development, utilization or conservation of  
37 the water resources of the state.

38 (j) Encourage coordinated regional planning and action for  
39 water quality control.

1 ~~(k) In consultation with the state board, identify and post on~~  
2 ~~the Internet the schedules for the identification and the specific~~  
3 ~~allocation of the total maximum daily loads for those waters~~  
4 ~~listed pursuant to Section 303(d) of the Clean Water Act (33~~  
5 ~~U.S.C. Sec. 1313(d)). The date prescribed for the specific~~  
6 ~~allocation of total maximum daily loads in an implementation~~  
7 ~~plan for those waters shall not be more than 10 years subsequent~~  
8 ~~to the listing of the water body pursuant to Section 303(d) of the~~  
9 ~~Clean Water Act (33 U.S.C. Sec. 1313(d)).~~

10 ~~(l)–~~  
11 ~~(k) In consultation with the state board, identify and post on~~  
12 ~~the Internet a summary list of all enforcement actions undertaken~~  
13 ~~by that regional board and the dispositions of those actions,~~  
14 ~~including any fines assessed. This list shall be updated at least~~  
15 ~~quarterly.~~

16 ~~SEC. 14. Section 13260 of the Water Code is amended to~~  
17 ~~read:~~

18 ~~13260. (a) All of the following persons shall file with the~~  
19 ~~appropriate regional board a report of the discharge, containing~~  
20 ~~the information which may be required by the regional board:~~

21 ~~(1) Any person discharging waste, or proposing to discharge~~  
22 ~~waste, within any region that could affect the quality of the~~  
23 ~~waters of the state, other than into a community sewer system.~~

24 ~~(2) Any person who is a citizen, domiciliary, or political~~  
25 ~~agency or entity of this state discharging waste, or proposing to~~  
26 ~~discharge waste, outside the boundaries of the state in a manner~~  
27 ~~that could affect the quality of the waters of the state within any~~  
28 ~~region.~~

29 ~~(3) Any person operating, or proposing to construct, an~~  
30 ~~injection well.~~

31 ~~(b) No report of waste discharge need be filed pursuant to~~  
32 ~~subdivision (a) if the requirement is waived pursuant to Section~~  
33 ~~13269.~~

34 ~~(c) Every person subject to subdivision (a) shall file with the~~  
35 ~~appropriate regional board a report of waste discharge relative to~~  
36 ~~any material change or proposed change in the character,~~  
37 ~~location, or volume of the discharge.~~

38 ~~(d) (1) (A) Each person who is subject to subdivision (a) or~~  
39 ~~(c) shall submit an annual fee according to a fee schedule~~  
40 ~~established by the state board.~~

1 ~~(B) The total amount of annual fees collected pursuant to this~~  
2 ~~section shall equal that amount necessary to recover costs~~  
3 ~~incurred in connection with the issuance, administration,~~  
4 ~~reviewing, monitoring, and enforcement of waste discharge~~  
5 ~~requirements and waivers of waste discharge requirements.~~

6 ~~(C) Recoverable costs may include, but are not limited to,~~  
7 ~~costs incurred in reviewing waste discharge reports, prescribing~~  
8 ~~terms of waste discharge requirements and monitoring~~  
9 ~~requirements, enforcing and evaluating compliance with waste~~  
10 ~~discharge requirements and waiver requirements, conducting~~  
11 ~~surface water and groundwater monitoring and modeling,~~  
12 ~~analyzing laboratory samples, and reviewing documents prepared~~  
13 ~~for the purpose of regulating the discharge of waste, and~~  
14 ~~administrative costs incurred in connection with carrying out~~  
15 ~~these actions.~~

16 ~~(D) In establishing the amount of a fee that may be imposed~~  
17 ~~on any confined animal feeding and holding operation pursuant~~  
18 ~~to this section, including, but not limited to, any dairy farm, the~~  
19 ~~state board shall consider all of the following factors:~~

- 20 ~~(i) The size of the operation.~~  
21 ~~(ii) Whether the operation has been issued a permit to operate~~  
22 ~~pursuant to Section 1342 of Title 33 of the United States Code.~~  
23 ~~(iii) Any applicable waste discharge requirement or~~  
24 ~~conditional waiver of a waste discharge requirement.~~  
25 ~~(iv) The type and amount of discharge from the operation.~~  
26 ~~(v) The pricing mechanism of the commodity produced.~~  
27 ~~(vi) Any compliance costs borne by the operation pursuant to~~  
28 ~~state and federal water quality regulations.~~  
29 ~~(vii) Whether the operation participates in a quality assurance~~  
30 ~~program certified by a regional water quality control board, the~~  
31 ~~state board, or a federal water quality control agency.~~

32 ~~(2) (A) Subject to subparagraph (B), any fees collected~~  
33 ~~pursuant to this section shall be deposited in the Waste Discharge~~  
34 ~~Permit Fund, which is hereby created. The money in the fund is~~  
35 ~~available for expenditure by the state board, upon appropriation~~  
36 ~~by the Legislature, solely for the purposes of carrying out this~~  
37 ~~division.~~

38 ~~(B) (i) Notwithstanding subparagraph (A), the fees collected~~  
39 ~~pursuant to this section from stormwater dischargers that are~~  
40 ~~subject to a general industrial or construction stormwater permit~~

~~under the national pollutant discharge elimination system (NPDES) shall be separately accounted for in the Waste Discharge Permit Fund.~~

~~(ii) Not less than 50 percent of the money in the Waste Discharge Permit Fund that is separately accounted for pursuant to clause (i) is available, upon appropriation by the Legislature, for expenditure by the regional board with jurisdiction over the permitted industry or construction site that generated the fee to carry out stormwater programs in the region.~~

~~(iii) Each regional board that receives money pursuant to clause (ii) shall spend not less than 50 percent of that money solely on stormwater inspection and regulatory compliance issues associated with industrial and construction stormwater programs.~~

~~(3) Any person who would be required to pay the annual fee prescribed by paragraph (1) for waste discharge requirements applicable to discharges of solid waste, as defined in Section 40191 of the Public Resources Code, at a waste management unit that is also regulated under Division 30 (commencing with Section 40000) of the Public Resources Code, shall be entitled to a waiver of the annual fee for the discharge of solid waste at the waste management unit imposed by paragraph (1) upon verification by the state board of payment of the fee imposed by Section 48000 of the Public Resources Code, and provided that the fee established pursuant to Section 48000 of the Public Resources Code generates revenues sufficient to fund the programs specified in Section 48004 of the Public Resources Code and the amount appropriated by the Legislature for those purposes is not reduced.~~

~~(e) Each person who discharges waste in a manner regulated by this section shall pay an annual fee to the state board. The state board shall establish, by regulation, a timetable for the payment of the annual fee. If the state board or a regional board determines that the discharge will not affect, or have the potential to affect, the quality of the waters of the state, all or part of the annual fee shall be refunded.~~

~~(f) (1) The state board shall adopt, by emergency regulations, a schedule of fees authorized under subdivision (d). The total revenue collected each year through annual fees shall be set at an amount equal to the revenue levels set forth in the Budget Act for this activity. The state board shall automatically adjust the annual~~

1 fees each fiscal year to conform with the revenue levels set forth  
2 in the Budget Act for this activity. If the state board determines  
3 that the revenue collected during the preceding year was greater  
4 than, or less than, the revenue levels set forth in the Budget Act,  
5 the state board may further adjust the annual fees to compensate  
6 for the over and under collection of revenue.

7 (2) ~~The emergency regulations adopted pursuant to this~~  
8 ~~subdivision, any amendment thereto, or subsequent adjustments~~  
9 ~~to the annual fees, shall be adopted by the state board in~~  
10 ~~accordance with Chapter 3.5 (commencing with Section 11340)~~  
11 ~~of Part 1 of Division 3 of Title 2 of the Government Code. The~~  
12 ~~adoption of these regulations is an emergency and shall be~~  
13 ~~considered by the Office of Administrative Law as necessary for~~  
14 ~~the immediate preservation of the public peace, health, safety,~~  
15 ~~and general welfare. Notwithstanding Chapter 3.5 (commencing~~  
16 ~~with Section 11340) of Part 1 of Division 3 of Title 2 of the~~  
17 ~~Government Code, any emergency regulations adopted by the~~  
18 ~~state board, or adjustments to the annual fees made by the state~~  
19 ~~board pursuant to this section, shall not be subject to review by~~  
20 ~~the Office of Administrative Law and shall remain in effect until~~  
21 ~~revised by the state board.~~

22 (g) ~~The state board shall adopt regulations setting forth~~  
23 ~~reasonable time limits within which the regional board shall~~  
24 ~~determine the adequacy of a report of waste discharge submitted~~  
25 ~~under this section.~~

26 (h) ~~Each report submitted under this section shall be sworn to,~~  
27 ~~or submitted under penalty of perjury.~~

28 (i) ~~The regulations adopted by the state board pursuant to~~  
29 ~~subdivision (f) shall include a provision that annual fees shall not~~  
30 ~~be imposed on those who pay fees under the national pollutant~~  
31 ~~discharge elimination system until the time when those fees are~~  
32 ~~again due, at which time the fees shall become due on an annual~~  
33 ~~basis.~~

34 (j) ~~Any person operating or proposing to construct an oil, gas,~~  
35 ~~or geothermal injection well subject to paragraph (3) of~~  
36 ~~subdivision (a), shall not be required to pay a fee pursuant to~~  
37 ~~subdivision (d), if the injection well is regulated by the Division~~  
38 ~~of Oil and Gas of the Department of Conservation, in lieu of the~~  
39 ~~appropriate California regional water quality control board,~~  
40 ~~pursuant to the memorandum of understanding, entered into~~



1 between the state board and the Department of Conservation on  
2 May 19, 1988. This subdivision shall remain operative until the  
3 memorandum of understanding is revoked by the state board or  
4 the Department of Conservation.

5 (k) In addition to the report required by subdivision (a), before  
6 any person discharges mining waste, the person shall first submit  
7 both of the following to the regional board:

8 (1) A report on the physical and chemical characteristics of the  
9 waste that could affect its potential to cause pollution or  
10 contamination. The report shall include the results of all tests  
11 required by regulations adopted by the board, any test adopted by  
12 the Department of Toxic Substances Control pursuant to Section  
13 25141 of the Health and Safety Code for extractable, persistent,  
14 and bioaccumulative toxic substances in a waste or other  
15 material, and any other tests that the state board or regional board  
16 may require, including, but not limited to, tests needed to  
17 determine the acid-generating potential of the mining waste or  
18 the extent to which hazardous substances may persist in the  
19 waste after disposal.

20 (2) A report that evaluates the potential of the discharge of the  
21 mining waste to produce, over the long term, acid mine drainage,  
22 the discharge or leaching of heavy metals, or the release of other  
23 hazardous substances.

24 (l) Except upon the written request of the regional board, a  
25 report of waste discharge need not be filed pursuant to  
26 subdivision (a) or (c) by a user of recycled water that is being  
27 supplied by a supplier or distributor of recycled water for whom  
28 a master recycling permit has been issued pursuant to Section  
29 13523.1.

30 SEC. 15. Section 13260.3 of the Water Code is amended to  
31 read:

32 13260.3. (a) On or before January 1 of each year, the state  
33 board shall report to the Legislative Analyst's Office, the  
34 Governor, and the Legislature on the expenditure of annual fees  
35 collected pursuant to Section 13260.

36 (b) The Legislative Analyst's Office shall review the report  
37 before the report is submitted to the Governor and the Legislature  
38 and shall add to the report its written assessment of the extent to  
39 which information relating to fee collection and expenditure is  
40 available to the public, is consistent with Section 13260, and is

1 sufficient to ensure that the state has adequate funds for full  
2 regulatory program implementation and enforcement, for water  
3 quality monitoring that is adequate to track the health of all of the  
4 state's waters, and for research pertaining to standards  
5 appropriate for new pollutants not yet regulated.

6 SEC. 16. Section 13265 of the Water Code is amended to  
7 read:

8 13265. (a) Any person discharging waste in violation of  
9 Section 13264 is guilty of a misdemeanor and may be liable  
10 civilly in accordance with subdivision (b). Each day of such  
11 discharge shall constitute a separate offense.

12 (b) (1) Civil liability may be administratively imposed by a  
13 regional board in accordance with Article 2.5 (commencing with  
14 Section 13323) of Chapter 5 for a violation of subdivision (a) in  
15 an amount which shall not exceed one thousand dollars (\$1,000)  
16 for each day in which the violation occurs.

17 (2) Civil liability may be imposed by the superior court in  
18 accordance with Articles 5 (commencing with Section 13350)  
19 and 6 (commencing with Section 13360) of Chapter 5 for a  
20 violation of subdivision (a) in an amount which shall not exceed  
21 five thousand dollars (\$5,000) for each day in which the violation  
22 occurs.

23 (c) Any person discharging hazardous waste, as defined in  
24 Section 25117 of the Health and Safety Code, in violation of  
25 Section 13264 is guilty of a misdemeanor and may be liable  
26 civilly in accordance with subdivision (d). That liability shall not  
27 be imposed if the discharger is not negligent and immediately  
28 files a report of the discharge with the board, or if the regional  
29 board determines that the violation of Section 13264 was  
30 insubstantial.

31 This subdivision shall not be applicable to any waste discharge  
32 which is subject to Chapter 5.5 (commencing with Section  
33 13370).

34 (d) (1) Civil liability may be administratively imposed by a  
35 regional board in accordance with Article 2.5 (commencing with  
36 Section 13323) of Chapter 5 for a violation of subdivision (c) in  
37 an amount which shall not exceed five thousand dollars (\$5,000)  
38 for each day in which the violation occurs.

39 (2) Civil liability may be imposed by the superior court in  
40 accordance with Articles 5 (commencing with Section 13350)

1 and 6 (commencing with Section 13360) of Chapter 5 for a  
2 violation of subdivision (c) in an amount which shall not exceed  
3 twenty-five thousand dollars (\$25,000) for each day in which the  
4 violation occurs.

5 SEC. 17. Section 13266 of the Water Code is amended to  
6 read:

7 13266. (a) Each city, county, or city and county shall notify  
8 the regional board of the preparation of, and schedule leading to,  
9 the projected date for the filing of a tentative subdivision map or  
10 of any application for a building permit that may involve the  
11 discharge of waste, other than discharges into a community  
12 sewer system and discharges from dwellings involving  
13 five-family units or less.

14 (b) The regional board shall ensure that the actions described  
15 in subdivision (a) include provision for implementation of an  
16 adequate water quality management plan, as needed. The  
17 regional board shall also make this information accessible to the  
18 public through the Internet, and shall ensure that the public is  
19 notified of all opportunities for public comment on the actions  
20 described in this section.

21 SEC. 18.

22 SEC. 11. Section 13267 of the Water Code is amended to  
23 read:

24 13267. (a) A regional board, in establishing or reviewing any  
25 water quality control plan or waste discharge requirements, or in  
26 connection with any action relating to any plan or requirement  
27 authorized by this division, may investigate the quality of any  
28 waters of the state within its region.

29 (b) (1) In conducting an investigation specified in subdivision  
30 (a), the regional board may require that any person who has  
31 discharged, discharges, or is suspected of having discharged or  
32 discharging, or who proposes to discharge waste within its  
33 region, or any citizen or domiciliary, or political agency or entity  
34 of this state who has discharged, discharges, or is suspected of  
35 having discharged or discharging, or who proposes to discharge,  
36 waste outside of its region that could affect the quality of waters  
37 within its region shall furnish, under penalty of perjury, technical  
38 or monitoring program reports which the regional board requires.  
39 The burden, including costs, of these reports shall bear a  
40 reasonable relationship to the need for the report and the benefits

1 to be obtained from the reports. In requiring those reports, the  
2 regional board shall provide the person with a written  
3 explanation with regard to the need for the reports, and shall  
4 identify the evidence that supports requiring that person to  
5 provide the reports.

6 (2) When requested by the person furnishing a report, the  
7 portions of a report that might disclose trade secrets or secret  
8 processes may not be made available for inspection by the public  
9 but shall be made available to governmental agencies for use in  
10 making studies. However, these portions of a report shall be  
11 available for use by the state or any state agency in judicial  
12 review or enforcement proceedings involving the person  
13 furnishing the report.

14 (c) In conducting an investigation pursuant to subdivision (a),  
15 the regional board may inspect the facilities of any person to  
16 ascertain whether the purposes of this division are being met and  
17 waste discharge requirements are being complied with. The  
18 inspection shall be made with the consent of the owner or  
19 possessor of the facilities or, if the consent is withheld, with a  
20 warrant duly issued pursuant to the procedure set forth in Title 13  
21 (commencing with Section 1822.50) of Part 3 of the Code of  
22 Civil Procedure. However, in the event of an emergency  
23 affecting the public health or safety, an inspection may be  
24 performed without consent or the issuance of a warrant.

25 (d) The state board or a regional board may require any  
26 person, including a person subject to a waste discharge  
27 requirement under Section 13263, who is discharging, or who  
28 proposes to discharge, wastes or fluid into an injection well, to  
29 furnish the state board or regional board with a complete report  
30 on the condition and operation of the facility or injection well, or  
31 any other information that may be reasonably required to  
32 determine whether the injection well could affect the quality of  
33 the waters of the state.

34 (e) As used in this section, “evidence” means any relevant  
35 evidence on which responsible persons are accustomed to rely in  
36 the conduct of serious affairs, regardless of the existence of any  
37 common law or statutory rule which might make improper the  
38 admission of the evidence over objection in a civil action.

39 (f) The state board may carry out the authority granted to a  
40 regional board pursuant to this section.

~~SEC. 19.~~

*SEC. 12.* Section 13268 of the Water Code is amended to read:

13268. (a) (1) Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, or failing or refusing to furnish a statement of compliance as required by subdivision (b) of Section 13399.2, or falsifying any information provided therein, is guilty of a misdemeanor, and may be liable civilly in accordance with subdivision (b).

(2) Any person who knowingly commits any violation described in paragraph (1) is subject to criminal penalties pursuant to subdivision (e).

(b) (1) Civil liability may be administratively imposed by a regional board or the state board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

(2) Civil liability may be imposed by the superior court in accordance with Article 5 (commencing with Section 13350) and Article 6 (commencing with Section 13360) of Chapter 5 for a violation of subdivision (a) in an amount which shall not exceed five thousand dollars (\$5,000) for each day in which the violation occurs.

(c) Any person discharging hazardous waste, as defined in Section 25117 of the Health and Safety Code, who knowingly fails or refuses to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267, or who knowingly falsifies any information provided in those technical or monitoring program reports, is guilty of a misdemeanor, may be civilly liable in accordance with subdivision (d), and is subject to criminal penalties pursuant to subdivision (e).

(d) (1) Civil liability may be administratively imposed by a regional board or the state board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision (c) in an amount which shall not exceed five thousand dollars (\$5,000) for each day in which the violation occurs.

(2) Civil liability may be imposed by the superior court in accordance with Article 5 (commencing with Section 13350) and Article 6 (commencing with Section 13360) of Chapter 5 for a violation of subdivision (c) in an amount which shall not exceed twenty-five thousand dollars (\$25,000) for each day in which the violation occurs.

(e) (1) Subject to paragraph (2), any person who knowingly commits any of the violations set forth in subdivision (a) or (c) shall be punished by a fine that does not exceed twenty-five thousand dollars (\$25,000).

(2) Any person who knowingly commits any of the violations set forth in subdivision (a) or (c) after a prior conviction for a violation set forth in subdivision (a) or (c) shall be punished by a fine that does not exceed twenty-five thousand dollars (\$25,000) for each day of the violation.

(f) (1) Notwithstanding any other provision of law, fines collected pursuant to subdivision (e) shall be deposited in the Waste Discharge Permit Fund and separately accounted for in that fund.

(2) The funds described in paragraph (1) shall be expended by the state board, upon appropriation by the Legislature, to assist regional boards, and other public agencies with authority to clean up waste, or abate the effects of the waste, in cleaning up or abating the effects of the waste on waters of the state or for the purposes authorized in Section 13443.

~~SEC. 20. Section 13269 of the Water Code is amended to read:~~

~~13269. (a) (1) On and after January 1, 2000, the provisions of subdivisions (a) and (c) of Section 13260, subdivision (a) of Section 13263, or subdivision (a) of Section 13264 may be waived by the state board or a regional board as to a specific discharge or type of discharge if the state board or a regional board determines, after any necessary state board or regional board meeting, that the waiver is consistent with any applicable state or regional water quality control plan and is in the public interest. The state board or a regional board shall give notice of any necessary meeting by publication pursuant to Section 11125 of the Government Code.~~

~~(2) A waiver may not exceed five years in duration, but may be renewed by the state board or a regional board. The waiver~~

1 shall be conditional and may be terminated at any time by the  
2 state board or a regional board. The conditions of the waiver  
3 shall include, but need not be limited to, the submission to the  
4 regional board of the appropriate notice of intent to obtain  
5 coverage under the waiver, along with a contact name and  
6 address for the applicant for coverage, and the performance of  
7 individual, group, or watershed-based monitoring, except as  
8 provided in paragraph (3). Monitoring requirements shall be  
9 designed to support the development and implementation of the  
10 waiver program, including, but not limited to, verifying the  
11 adequacy and effectiveness of the waiver's conditions. In  
12 establishing monitoring requirements, the regional board may  
13 consider the volume, duration, frequency, and constituents of the  
14 discharge; the extent and type of existing monitoring activities;  
15 including, but not limited to, existing watershed-based,  
16 compliance, and effectiveness monitoring efforts; the size of the  
17 project area; and other relevant factors. Monitoring results shall  
18 be made available to the public.

19 (3) The state board or a regional board may waive the  
20 monitoring requirements described in this subdivision for  
21 discharges that it determines do not pose a significant threat to  
22 water quality.

23 (4) (A) The state board or a regional board may include as a  
24 condition of a waiver the payment of an annual fee established by  
25 the state board in accordance with subdivision (f) of Section  
26 13260.

27 (B) Funds generated by the payment of the fee shall be  
28 deposited in the Waste Discharge Permit Fund for expenditure,  
29 upon appropriation by the Legislature, by the state board or  
30 appropriate regional board for the purpose of carrying out  
31 activities limited to those necessary to establish and implement  
32 the waiver program pursuant to this section. The total amount of  
33 annual fees collected pursuant to this section shall not exceed the  
34 costs of those activities necessary to establish and implement  
35 waivers of waste discharge requirements pursuant to this section.

36 (C) In establishing the amount of a fee that may be imposed on  
37 irrigated agriculture operations pursuant to this section, the state  
38 board shall consider relevant factors, including, but not limited  
39 to, all of the following:

40 (i) The size of the operations.

1 ~~(ii) Any compliance costs borne by the operations pursuant to~~  
2 ~~state and federal water quality regulations.~~

3 ~~(iii) Any costs associated with water quality monitoring~~  
4 ~~performed or funded by the operations.~~

5 ~~(iv) Participation in a watershed management program~~  
6 ~~approved by the applicable regional board.~~

7 ~~(D) In establishing the amount of a fee that may be imposed~~  
8 ~~on silviculture operations pursuant to this section, the state board~~  
9 ~~shall consider relevant factors, including, but not limited to, all of~~  
10 ~~the following:~~

11 ~~(i) The size of the operations.~~

12 ~~(ii) Any compliance costs borne by the operations pursuant to~~  
13 ~~state and federal water quality regulations.~~

14 ~~(iii) Any costs associated with water quality monitoring~~  
15 ~~performed or funded by the operations.~~

16 ~~(iv) The average annual number of timber harvest plans~~  
17 ~~proposed by the operations.~~

18 ~~(5) The state board or a regional board shall give notice of the~~  
19 ~~adoption of a waiver by publication within the affected county or~~  
20 ~~counties as set forth in Section 6061 of the Government Code.~~

21 ~~(b) (1) A waiver in effect on January 1, 2000, shall remain~~  
22 ~~valid until January 1, 2003, unless the regional board terminates~~  
23 ~~that waiver prior to that date. All waivers that were valid on~~  
24 ~~January 1, 2000, and granted an extension until January 1, 2003,~~  
25 ~~and not otherwise terminated, may be renewed by a regional~~  
26 ~~board in five-year increments.~~

27 ~~(2) Notwithstanding paragraph (1), a waiver for an onsite~~  
28 ~~sewage treatment system that is in effect on January 1, 2002,~~  
29 ~~shall remain valid until June 30, 2004, unless the regional board~~  
30 ~~terminates the waiver prior to that date. Any waiver for onsite~~  
31 ~~sewage treatment systems adopted or renewed after June 30,~~  
32 ~~2004, shall be consistent with the applicable regulations or~~  
33 ~~standards for onsite sewage treatment systems adopted or~~  
34 ~~retained in accordance with Section 13291.~~

35 ~~(e) Upon notification of the appropriate regional board of the~~  
36 ~~discharge or proposed discharge, except as provided in~~  
37 ~~subdivision (d), the provisions of subdivisions (a) and (c) of~~  
38 ~~Section 13260, subdivision (a) of Section 13263, and subdivision~~  
39 ~~(a) of Section 13264 do not apply to a discharge resulting from~~  
40 ~~any of the following emergency activities:~~



1 ~~(1) Immediate emergency work necessary to protect life or~~  
2 ~~property or immediate emergency repairs to public service~~  
3 ~~facilities necessary to maintain service as a result of a disaster in~~  
4 ~~a disaster-stricken area in which a state of emergency has been~~  
5 ~~proclaimed by the Governor pursuant to Chapter 7 (commencing~~  
6 ~~with Section 8550) of Division 1 of Title 2 of the Government~~  
7 ~~Code.~~

8 ~~(2) Emergency projects undertaken, carried out, or approved~~  
9 ~~by a public agency to maintain, repair, or restore an existing~~  
10 ~~highway, as defined in Section 360 of the Vehicle Code, except~~  
11 ~~for a highway designated as an official state scenic highway~~  
12 ~~pursuant to Section 262 of the Streets and Highways Code,~~  
13 ~~within the existing right-of-way of the highway, damaged as a~~  
14 ~~result of fire, flood, storm, earthquake, land subsidence, gradual~~  
15 ~~earth movement, or landslide within one year of the damage.~~  
16 ~~This paragraph does not exempt from this section any project~~  
17 ~~undertaken, carried out, or approved by a public agency to~~  
18 ~~expand or widen a highway damaged by fire, flood, storm,~~  
19 ~~earthquake, land subsidence, gradual earth movement, or~~  
20 ~~landslide.~~

21 ~~(d) Subdivision (c) is not a limitation of the authority of a~~  
22 ~~regional board under subdivision (a) to determine that any~~  
23 ~~provision of this division shall not be waived or to establish~~  
24 ~~conditions of a waiver. Subdivision (c) shall not apply to the~~  
25 ~~extent that it is inconsistent with any waiver or other order or~~  
26 ~~prohibition issued under this division.~~

27 ~~(e) The regional boards and the state board shall require~~  
28 ~~compliance with the conditions pursuant to which waivers are~~  
29 ~~granted under this section.~~

30 ~~(f) Prior to renewing any waiver for a specific type of~~  
31 ~~discharge established under this section, the state board or a~~  
32 ~~regional board shall review the terms of the waiver policy at a~~  
33 ~~public hearing. At the hearing, the state board or a regional board~~  
34 ~~shall determine whether the discharge for which the waiver~~  
35 ~~policy was established should be subject to general or individual~~  
36 ~~waste discharge requirements.~~

37 ~~SEC. 21. Section 13292 of the Water Code is amended to~~  
38 ~~read:~~

39 ~~13292. (a) It is the responsibility of the state board to provide~~  
40 ~~guidance to the regional boards in matters of procedure, as well~~

1 as policy and regulation. In order to ensure that regional boards  
2 are providing fair, timely, and equal access to all participants in  
3 regional board proceedings, the state board shall undertake a  
4 review of the regional boards' public participation procedures.  
5 As part of the review process, and upon request by the state  
6 board, the regional boards shall solicit comments from  
7 participants in their proceedings. Upon completion of the review,  
8 the state board shall report to the Legislature regarding its  
9 findings and include recommendations to improve regional board  
10 public participation processes.

11 (b) (1) The state board shall provide annual training to  
12 regional board members to improve public participation  
13 procedures at the regional level.

14 (2) Paragraph (1) shall be implemented only during fiscal  
15 years for which funding is provided for the purposes of that  
16 paragraph in the annual Budget Act or in another statute.

17 (c) To ensure adequate public participation in regional board  
18 proceedings, the state board and each regional board shall do all  
19 of the following:

20 (1) Recirculate updated staff reports, revised orders, and  
21 related materials, and allow for a new comment period, whenever  
22 significant changes are made to a tentative order.

23 (2) Provide written responses to written public comments in  
24 advance of decisions relating to a matter pending before that  
25 respective board.

26 (3) Allow the submission of written comments to be provided  
27 after the presentation of oral testimony at a workshop.

28 SEC. 22.

29 SEC. 13. Section 13323 of the Water Code is amended to  
30 read:

31 13323. (a) Any executive officer of a regional board may  
32 issue a complaint to any person on whom administrative civil  
33 liability may be imposed pursuant to this article. The complaint  
34 shall allege the act or failure to act that constitutes a violation of  
35 law, the provision of law authorizing civil liability to be imposed  
36 pursuant to this article, and the proposed civil liability.

37 (b) The complaint shall be served by certified mail or in  
38 accordance with Article 3 (commencing with Section 415.10) of,  
39 and Article 4 (commencing with Section 416.10) of, Chapter 4 of  
40 Title 5 of Part 2 of the Code of Civil Procedure, and shall inform

the party so served that a hearing before the regional board shall be conducted within 90 days after the party has been served. The person who has been issued a complaint may waive the right to a hearing. Notice of all waivers and fines, if any, shall be made available to the public through the Internet, and the public shall have 30 days from the date of that notification to request a hearing on the waiver.

(c) In proceedings under this article for imposition of administrative civil liability by the state board, the executive director of the state board shall issue the complaint and any hearing shall be before the state board, or before a member of the state board in accordance with Section 183, and shall be conducted not later than 90 days after the party has been served.

(d) Orders imposing administrative civil liability shall become effective and final upon issuance thereof, and are not subject to review by any court or agency except as provided by Sections 13320 and 13330. Payment shall be made not later than 30 days from the date on which the order is issued. The time for payment is extended during the period in which a person who is subject to an order seeks review under Section 13320 or 13330. Copies of these orders shall be served by certified mail or in accordance with Article 3 (commencing with Section 415.10) of, and Article 4 (commencing with Section 416.10) of, Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure upon the party served with the complaint and shall be provided to other persons who appeared at the hearing and requested a copy.

~~SEC. 23. Section 13350 of the Water Code is amended to read:~~

~~13350. (a) Any person who (1) violates any cease and desist order or cleanup and abatement order hereafter issued, reissued, or amended by a regional board or the state board, or (2) violates any waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board, or (3) causes or permits any oil or any residuary product of petroleum to be deposited in or on any of the waters of the state, except in accordance with waste discharge requirements or other actions or provisions of this division, shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).~~

~~(b) For purposes of subdivision (a), the term “discharge” does not include any emission excluded from the applicability of Section 311 of the Clean Water Act (33 U.S.C. Sec. 1321) pursuant to Environmental Protection Agency regulations interpreting Section 311(a)(2) of the Clean Water Act (33 U.S.C. Sec. 1321(a)(2)).~~

~~(c) There shall be no liability under subdivision (b) if the violation is caused solely by any one or combination of the following:~~

~~(1) An act of war.~~

~~(2) An unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.~~

~~(3) Negligence on the part of the state, the United States, or any department or agency thereof; provided, that this paragraph shall not be interpreted to provide the state, the United States, or any department or agency thereof a defense to liability for any violation caused by its own negligence.~~

~~(4) An intentional act of a third party, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.~~

~~(d) The court may impose civil liability either on a daily basis or on a per gallon basis, but not both.~~

~~(1) The civil liability on a daily basis may not exceed fifteen thousand dollars (\$15,000) for each day the violation occurs.~~

~~(2) The civil liability on a per gallon basis may not exceed twenty dollars (\$20) for each gallon of waste discharged.~~

~~(e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both.~~

~~(1) The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs.~~

~~(A) When there is a discharge, and a cleanup and abatement order is issued, except as provided in subdivision (f), the civil liability shall not be less than five hundred dollars (\$500) for each day in which the discharge occurs and for each day the cleanup and abatement order is violated.~~

1 ~~(B) When there is no discharge, but an order issued by the~~  
2 ~~regional board is violated, except as provided in subdivision (f),~~  
3 ~~the civil liability shall not be less than one hundred dollars (\$100)~~  
4 ~~for each day in which the violation occurs.~~

5 ~~(2) The civil liability on a per gallon basis may not exceed ten~~  
6 ~~dollars (\$10) for each gallon of waste discharged.~~

7 ~~(f) A regional board may not administratively impose civil~~  
8 ~~liability in accordance with paragraph (1) of subdivision (c) in an~~  
9 ~~amount less than the minimum amount specified, unless the~~  
10 ~~regional board makes express findings setting forth the reasons~~  
11 ~~for its action based upon the specific factors required to be~~  
12 ~~considered pursuant to Section 13327.~~

13 ~~(g) The Attorney General, upon request of a regional board or~~  
14 ~~the state board, shall petition the superior court to impose, assess,~~  
15 ~~and recover such sums. Except in the case of a violation of a~~  
16 ~~cease and desist order, a regional board or the state board shall~~  
17 ~~make such request only after a hearing, with due notice of the~~  
18 ~~hearing given to all affected persons. In determining that amount,~~  
19 ~~the court shall be subject to Section 13351.~~

20 ~~(h) Article 3 (commencing with Section 13330) and Article 6~~  
21 ~~(commencing with Section 13360) apply to proceedings to~~  
22 ~~impose, assess, and recover an amount pursuant to this article.~~

23 ~~(i) Any person who incurs any liability established under this~~  
24 ~~section shall be entitled to contribution for that liability from any~~  
25 ~~third party, in an action in the superior court and upon proof that~~  
26 ~~the discharge was caused in whole or in part by an act or~~  
27 ~~omission of the third party, to the extent that the discharge is~~  
28 ~~caused by the act or omission of the third party, in accordance~~  
29 ~~with the principles of comparative fault.~~

30 ~~(j) Remedies under this section are in addition to, and do not~~  
31 ~~supersede or limit, any and all other remedies, civil or criminal,~~  
32 ~~except that no liability shall be recoverable under subdivision (b)~~  
33 ~~for any discharge for which liability is recovered under Section~~  
34 ~~13385.~~

35 ~~(k) Notwithstanding any other provision of law, all funds~~  
36 ~~generated by the imposition of liabilities pursuant to this section~~  
37 ~~shall be deposited into the Waste Discharge Permit Fund. These~~  
38 ~~moneys shall be separately accounted for, and shall be expended~~  
39 ~~by the state board, upon appropriation by the Legislature, to~~  
40 ~~assist regional boards, and other public agencies with authority to~~

1 clean up waste or abate the effects of the waste, in cleaning up or  
2 abating the effects of the waste on waters of the state or for the  
3 purposes authorized in Section 13443.

4 SEC. 24. Section 13399.26 is added to the Water Code, to  
5 read:

6 13399.26. (a) The state board shall prescribe in quantifiable  
7 terms the definitions of “best available technology” and  
8 “maximum extent practicable” for all pollutants found in  
9 stormwater discharges and for which a numeric water quality  
10 standard has been established in any water quality control plan,  
11 and include those technology-based numeric effluent limits in  
12 stormwater permits, as those permits are updated, and shall  
13 review and update those limits as needed at least every five  
14 years.

15 (b) If a focused technical effort to derive numeric effluent  
16 limits for municipal stormwater requires information and analysis  
17 that cannot be completed within the applicable permit cycle, the  
18 state board shall, in the interim, establish, include in municipal  
19 stormwater permits, and enforce compliance schedules that  
20 require specified numeric reductions in mass loadings of  
21 representative pollutants that will ensure compliance with water  
22 quality standards in receiving waters by a date certain. Numeric  
23 effluent limits shall be included in the permits for those waters in  
24 the permit cycle that immediately follows.

25 SEC. 25.

26 SEC. 14. Section 13440 of the Water Code is amended to  
27 read:

28 13440. There is in the State Water Quality Control Fund the  
29 State Water Pollution Cleanup and Abatement Account  
30 (hereinafter called the “account”), to be administered by the state  
31 board in consultation with the regional boards.

32 SEC. 26.

33 SEC. 15. Section 13441 of the Water Code is amended to  
34 read:

35 13441. There is to be paid into the account all moneys from  
36 the following sources:

37 (a) All moneys appropriated by the Legislature for the  
38 account.

39 (b) All moneys contributed to the account by any person and  
40 accepted by the state board.

(c) One-half of all moneys collected by way of criminal penalty and all moneys collected civilly under any proceeding brought pursuant to any provision of this division.

(d) All moneys collected by the state board for the account under Section 13304.

The first unencumbered five hundred thousand dollars (\$500,000) paid into the account in any given fiscal year is available, without regard to fiscal years, for expenditure by the state board in accordance with the provisions of this article. The next unencumbered five hundred thousand dollars (\$500,000), or any portion thereof, deposited in any given fiscal year, is available for expenditure by the state board for the purposes of this article, subject to the provisions set forth in Section 28 of the Budget Act of 1984 (Chapter 258 of the Statutes of 1984). The next unencumbered one million dollars (\$1,000,000) deposited in the account in any given fiscal year is available for expenditure by the state board for the purposes of Section 13443. The remaining unencumbered funds deposited in the account in any given fiscal year is available without regard to fiscal years to the state board for expenditure for the purposes set forth in Section 13442. The state board shall separately account for the funds by region to ensure that all moneys described in this subdivision shall be expended in full within the region from which the revenues were generated. Only revenues generated as a result of enforcement of statewide water quality control plans may be used outside the region in which the violations occurred.

~~SEC. 27. Section 13443 of the Water Code is amended to read:~~

~~13443. Upon application by a regional board that is attempting to remedy a significant unforeseen water pollution problem, posing an actual or potential public health threat, or is overseeing and tracking the implementation of a supplemental environmental project required as a condition of an order imposing administrative civil liability, and for which the regional board does not have adequate resources budgeted, the state board shall order moneys generated from violations that occurred within that region to be paid from the account to the regional board to assist it in responding to the problem.~~

~~SEC. 28. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution~~

1 ~~because the only costs that may be incurred by a local agency or~~  
2 ~~school district will be incurred because this act creates a new~~  
3 ~~crime or infraction, eliminates a crime or infraction, or changes~~  
4 ~~the penalty for a crime or infraction, within the meaning of~~  
5 ~~Section 17556 of the Government Code, or changes the~~  
6 ~~definition of a crime within the meaning of Section 6 of Article~~  
7 ~~XIII B of the California Constitution.~~

O